

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 18-457V

UNPUBLISHED

LAURA RUSSELL,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: December 20, 2019

Petitioner's Motion for a Decision
Dismissing Her Petition; Influenza
(Flu) Vaccine; Shoulder Injury
Related to Vaccine Administration
(SIRVA); Special Processing Unit
(SPU)

Amy A. Senerth, Muller Brazil, LLP, Dresher, PA, for Petitioner.

Traci R. Patton, U.S. Department of Justice, Washington, DC, for Respondent.

DISMISSAL DECISION¹

On March 28, 2018, Laura Russell filed a petition for compensation under the National Vaccine Injury Compensation Program ("the Program"), 42 U.S.C. §300aa-10, *et seq.*,² (the "Vaccine Act"). Petitioner alleges that she suffered "right shoulder injuries" as a result of an influenza ("flu") vaccine administered on December 31, 2016. Petition at 1. Respondent filed a Rule 4(c) Report concluding that compensation is not appropriate in this case on March 22, 2019. ECF No. 21. The information in the record does not show entitlement to an award under the program.

On December 13, 2019, Petitioner moved for a decision dismissing the petition, noting that "she no longer wishes to pursue her case." ECF No. 33. Petitioner indicated that she "understands that a decision by the Chief Special Master dismissing her petition will result in a judgment against her. She has been advised that such a judgment will end all of her rights in the Vaccine Program." *Id.* Petitioner noted that

¹ Because this unpublished ruling contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the ruling will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all "§" references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

she “does intend to protect her rights to file a civil action in the future. Therefore, pursuant to 42 U.S.C. §300aa-21(a)(2), she intends to elect to reject the Vaccine Program judgment against her and elect to file a civil action.” *Id.*

To receive compensation under the Program, Petitioner must prove either 1) that she suffered a “Table Injury” – i.e., an injury falling within the Vaccine Injury Table – corresponding to one of her vaccinations, or 2) that she suffered an injury that was actually caused by a vaccine. See §§ 13(a)(1)(A) and 11(c)(1). Examination of the record does not disclose sufficient evidence to establish that Petitioner suffered a “Table Injury.” Further, the record does not contain a medical expert’s opinion or any other persuasive evidence indicating that Petitioner’s alleged injury was vaccine-caused.

Under the Vaccine Act, a petitioner may not be awarded compensation based on the petitioner’s claims alone. Rather, the petition must be supported by either the medical records or by a medical opinion. § 13(a)(1). In this case, the record does not contain medical records or a medical opinion sufficient to demonstrate that the vaccinee was injured by a vaccine.

For these reasons, in accordance with § 12(d)(3)(A), Petitioner’s claim for compensation is denied and this case is dismissed for insufficient proof. The Clerk shall enter judgment accordingly.³

IT IS SO ORDERED.

s/Brian H. Corcoran
Brian H. Corcoran
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties’ joint filing of notice renouncing the right to seek review.